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January 17, 2012

The Honorable Justice Charles W. Johnson
Supreme Court of Washington State
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Re: Comment on Suggested Rule Change RAP 18.13A

Dear Justice Johnson:

The Office of Public Defense appreciates the opportunity to comment on the suggested rule change to RAP 18.13A, proposed by the Washington State Bar Association. The suggested changes reflect amendments to OPD's original proposal, submitted and published for comment in February 2011. OPD strongly supports the WSBA amendments and urges prompt court action on this matter once the comment period has ended.


OPD originally proposed the rule change to address the problem of children being adopted while the order terminating parental rights, as the basis of the adoption, is pending appeal. At the time, OPD identified two recent cases where the termination order was reversed after the adoption had been finalized.

Since bringing this serious matter to the attention of the Court, the problem has not abated. We have recently learned that in yet another case, the children were adopted before the Court of Appeals issued a decision, vacating the termination order. The reversal in this case was uncontested because the error was apparent from the record. Adoptions, therefore, continue to be finalized pending appeal of the termination order even where reversible error is manifest and conceded on appeal.

So long as parents are not notified and given an opportunity to seek a stay when they are appealing termination orders, custodians will be free to consent to adoptions regardless of the merits of the appeal. This situation continues to pose grave risks to children and families.

Thank you for your consideration of this most pressing issue.

Sincerely,


Joanne Moore
Director